

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TERRI L. SEAL, and her husband,
GREGORY A. SEAL,

Plaintiffs,

v.

ELIJAH KELLOM and FEDERAL
EXPRESS CORPORATION, d/b/a
FEDEX EXPRESS,

Defendants.

C.A. No.: 1:18-372

JURY TRIAL DEMANDED

COMPLAINT – CIVIL ACTION

AND NOW, come the Plaintiffs, Terri L. Seal, and her husband, Gregory A. Seal (“Plaintiffs”), by and through their undersigned counsel, Adam E. Barnett, Esquire, Matthew J. Lager, Esquire, and Bernard Stuczynski Barnett & Lager, PLLC, and hereby file this civil action Complaint against Defendants, Elijah Kellom (“Kellom”) and Federal Express Corporation, d/b/a FedEx Express (“FedEx”) (collectively “Defendants”). In support of the claims set forth herein, Plaintiffs allege and aver as follows:

THE PARTIES

1. Plaintiff, Terri L. Seal, is an adult individual currently residing at 6214 Route 446, Eldred, McKean County, Pennsylvania 16731.
2. Plaintiff, Gregory A. Seal, the husband of Plaintiff, Terri L. Seal, is an adult individual currently residing at 6214 Route 446, Eldred, McKean County, Pennsylvania 16731.
3. Defendant, Elijah Kellom, is an adult individual currently residing at 4542 Girvan Drive, Unit E, Myrtle Beach, South Carolina, 29579.

4. Defendant, Federal Express Corporation, d/b/a FedEx Express, is a Delaware Corporation, engaged in the business, *inter alia*, of providing shipping and delivery services, with its principal business address of 3610 Hacks Cross Road, Memphis, Tennessee 38125.

JURISDICTION AND VENUE

5. Plaintiffs hereby incorporate, by reference thereto, the averments contained in paragraphs 1 through 4, as if set forth herewith at length.

6. Jurisdiction and venue are proper in the United States District Court for the Western District of Pennsylvania. This court has original diversity jurisdiction pursuant to 28 U.S.C. § 1332, for the following reasons:

- a. Plaintiffs are citizens of McKean County, Pennsylvania;
- b. Defendant, Kellom, is a citizen of South Carolina;
- c. Defendant, FedEx, is incorporated in the state of Delaware and its principal place of business is located in Tennessee; and
- d. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

FACTUAL AVERMENTS

7. Plaintiffs hereby incorporate, by reference thereto, the averments contained in paragraphs 1 through 6, as if set forth herewith at length.

8. On or about June 13, 2017, at approximately 3:50 p.m., Plaintiff, Terri L. Seal, was operating a 2007 Chevrolet Impala ("Seal vehicle") traveling in a northbound direction in the 700 block of East Main Street, Foster Township, McKean County, Pennsylvania.

9. At the above time and place, Defendant, Elijah Kellom, was negligently, carelessly, and recklessly operating a 2011 Mercedes-Benz full-size cargo van in that Kellom exited a driveway at 800 East Main Street at a high rate of speed, crossed the west bound lane of East Main

Street in an effort to travel South on East Main Street, and then crossed the center line of East Main Street, causing a collision with the Seal vehicle and injuries to Plaintiff, Terri L. Seal.

10. As a direct and proximate result of the negligence, recklessness and carelessness of Defendants, Kellom and FedEx, as more fully set forth herein under, Plaintiff, Terri L. Seal, was injured and suffered severe, serious and permanent injuries and permanent impairment of bodily function including:

- a. Contusions, abrasions, and lacerations to numerous parts of her body;
- b. A closed head injury;
- c. A laceration to her head;
- d. Concussion and post-concussive symptoms;
- e. A left shoulder injury;
- f. Bilateral knee injuries;
- g. Cervical injuries, including cervical disc protrusions at C3-4, C4-5, C5-6, and C6-7;
- h. Lumbar injuries, including lumbar disc protrusions at L5-S1;
- i. Chest Contusion;
- j. Right hip injury;
- k. Injury to her heart, including injury to her mitral valve;
- l. Dental injuries;
- m. Scarring and disfigurement;
- n. Emotional Distress;
- o. Anxiety; and
- p. Shock to nerves and nervous system.

11. As a direct and proximate result of the aforementioned injuries suffered by Plaintiff, Terri L. Seal, she has suffered the following damages:

- a. Plaintiff, Terri L. Seal, has suffered and will suffer great pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life's pleasures;
- b. Plaintiff has been and will be required to expend large sums of money for surgical, dental and medical attention, including hospitalizations, therapies, surgeries, medications, pain management, and physician services.
- c. Plaintiff has and will, suffer a loss of earnings and earning capacity; and
- d. Plaintiff's general health, strength, and viability have been impaired.

12. At all times relevant to this action, Defendant, Kellom, was an employee, servant, agent, or contractor of Defendant, FedEx, and was acting within the course and scope of his employment, servitude, agency, and/or contractual relationship when the above motor vehicle collision occurred.

COUNT I
TERRI L. SEAL v. ELIJAH KELLOM

13. Plaintiffs hereby incorporate, by reference thereto, the averments contained in paragraphs 1 through 12, as if set forth herewith at length.

14. The injuries sustained by Plaintiff, Terri L. Seal, were a direct result of the negligence, carelessness and recklessness of the Defendant, Elijah Kellom, in that:

- a. Kellom operated his vehicle at an excessive rate of speed under the circumstances;
- b. Kellom failed to have his vehicle under proper and reasonable control;
- c. Kellom's vehicle collided with the Seal vehicle;
- d. Kellom failed to steer his vehicle in a manner so as to avoid said collision;

- e. Kellom failed to pay proper and reasonable attention to the position of other vehicles on the road, including the Seal vehicle, as he proceeded onto East Main Street;
- f. Kellom operated his vehicle without due regard for the rights, safety and position of other vehicles on the road, including the Seal vehicle;
- g. Kellom was operating his vehicle while under the influence of medications and/or drugs at the time of the collision;
- h. Kellom was not mentally, emotionally or physically fit to operate a vehicle;
- i. Kellom was operating a communications device at the time of the collision;
- j. Kellom was operating his vehicle while distracted;
- k. Kellom failed to operate his vehicle in a safe and proper manner; and
- l. Kellom failed to comply with the laws, rules and regulations of the Pennsylvania Motor Vehicle Code including 75 Pa.C.S.A. § 3324 (vehicles entering or crossing roadway); 75 Pa.C.S.A. § 3714 (careless driving); 75 Pa.C.S.A. § 3361 (driving vehicle at safe speed); 75 Pa.C.S.A. § 3301 (driving on right side of roadway); and 75 Pa.C.S.A. § 3309 (driving on roadways laned for traffic).

WHEREFORE, Plaintiff, Terri L. Seal, demands judgment against Defendant, Elijah Kellom, in an amount in excess of seventy-five thousand dollars (\$75,000.00) in compensatory damages, plus interest, costs, punitive damages, and delay damages pursuant to Pa.R.C.P. 238.

A JURY TRIAL IS HEREBY DEMANDED

COUNT II
GREGORY A. SEAL v. ELIJAH KELLUM

15. Plaintiffs hereby incorporate, by reference thereto, the averments contained in paragraphs 1 through 14, as if set forth herewith at length.

16. That at all material times, Plaintiffs, Terri L. Seal and Gregory A. Seal, were married as husband and wife.

17. That as a direct and proximate result of the above described motor vehicle collision, Plaintiff, Gregory A. Seal, has suffered a loss of marital companionship, society, and services.

WHEREFORE, Plaintiff, Gregory A. Seal, joins with his wife, Terri L. Seal, and demands judgment against Defendant, Elijah Kellom, in an amount in excess of seventy-five thousand dollars (\$75,000.00) in compensatory damages, plus interest, costs, punitive damages, and delay damages pursuant to Pa.R.C.P. 238.

A JURY TRIAL IS HEREBY DEMANDED

COUNT III
TERRI L. SEAL v. FEDERAL EXPRESS CORPORATION d/b/a FEDEX EXPRESS

18. Plaintiffs hereby incorporate, by reference thereto, the averments contained in paragraphs 1 through 17, as if set forth herewith at length.

19. The injuries sustained by Plaintiff, Terri L. Seal, were a direct result of the negligence, carelessness and recklessness of the Defendant, Federal Express Corporation d/b/a FedEx Express, in that:

- a. Federal Express Corporation failed to provide adequate and appropriate driver training to Defendant, Elijah Kellom;

- b. Federal Express Corporation failed to maintain its commercial motor vehicle in compliance with all safety rules, including statutes, rules and regulations governing the operation and maintenance of vehicles, upon Pennsylvania roadways;
- c. Federal Express Corporation failed to make sure its drivers, including Defendant, Elijah Kellom, were qualified to safely operate its vehicles in such a way as to not harm the public;
- d. Federal Express Corporation failed to supervise its drivers, including Defendant, Elijah Kellom, to make sure its drivers are not operating vehicles in such a way to cause harm to the public;
- e. Federal Express Corporation knowingly permitted Defendant, Elijah Kellom, to operate a communications device while operating its vehicle;
- f. Federal Express Corporation failed to make sure its drivers, including Defendant, Elijah Kellom, were mentally, emotionally, and physically fit to operate a vehicle; and
- g. Federal Express Corporation pushes its drivers, including Defendant, Elijah Kellom, to make faster deliveries resulting in its vehicles being operated at an excessive rate of speed, increased distractions and other unsafe driving actions.

20. As employer and/or contractor of Defendant, Elijah Kellom, Federal Express Corporation is vicariously liable for the negligent, reckless, and careless actions and/or inaction of its employee, servant, agent, and/or contractor, Defendant, Elijah Kellom, and for the injuries and damages caused to Plaintiffs as a result of this incident.

WHEREFORE, Plaintiff, Terri L. Seal, demands judgment against Defendant, Federal Express Corporation d/b/a FedEx Express, in an amount in excess of seventy-five thousand dollars (\$75,000.00) in compensatory damages, plus interest, costs, punitive damages, and delay damages pursuant to Pa.R.C.P. 238.

A JURY TRIAL IS HEREBY DEMANDED

COUNT IV

GREGORY A. SEAL v. FEDERAL EXPRESS CORPORATION d/b/a FEDEX EXPRESS

21. Plaintiffs hereby incorporate, by reference thereto, the averments contained in paragraphs 1 through 20, as if set forth herewith at length.

22. That at all material times, Plaintiffs, Terri L. Seal and Gregory A. Seal, were married as husband and wife.

23. That as a direct and proximate result of the above described motor vehicle collision, Plaintiff, Gregory A. Seal, has suffered a loss of marital companionship, society, and services.

WHEREFORE, Plaintiff, Gregory A. Seal, joins with his wife, Terri L. Seal, and demands judgment against Defendant, Federal Express Corporation d/b/a FedEx Express, in an amount in excess of seventy-five thousand dollars (\$75,000.00) in compensatory damages, plus interest, costs, punitive damages, and delay damages pursuant to Pa.R.C.P. 238.

A JURY TRIAL IS HEREBY DEMANDED

Date: November 30, 2018

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